Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

of the United States Court of Customs and Patent Appeals and the United States Customs Court

Vol. 10 MAY 5, 1976 No. 18

This issue contains

DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

(T.D. 76-109)

Countervailing Duties—Frozen Boneless Beef from the European Community

Notice of countervailing duties to be imposed under section 303, Tariff Act of 1930, as amended, by reason of the payment or bestowal of a bounty or grant upon the manufacture, production or exportation of frozen boneless beef from the European Community

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C.

TITLE 19—CUSTOMS DUTIES

CHAPTER 1—U.S. CUSTOMS SERVICE

PART 159—LIQUIDATION OF DUTIES

On April 1, 1976, a "Notice of Initiation and Preliminary Countervailing Duty Determination" was published in the FEDERAL REGISTER (41 FR 13957). The notice stated that it had been determined tentatively that payments are being made, directly or indirectly, by the European Communities (consisting of France, the United Kingdom, West Germany, Luxembourg, Ireland, the Netherlands, Denmark, Italy and Belgium), upon the manufacture, production, or exportation of frozen boneless beef, which constitute a bounty or grant within the meaning of section 303 of the Tariff Act of 1930, as amended (19 U.S.C. 1303). The notice provided interested persons seven days from the date of publication to submit relevant data, views, arguments in writing with respect to the preliminary determination.

After consideration of all information received, it has been determined that exports of frozen boneless beef from the European Communities are subject to bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (19 U.S.C. 1303).

Accordingly, notice is hereby given that frozen boneless beef imported directly or indirectly from the European Communities, if entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the FEDERAL REGISTER, will be subject to payment of countervailing duties equal to the net amount of any bounty or grant determined or estimated to have been paid or bestowed.

In accordance with section 303, the net amount of the bounties or grants has been ascertained and determined, or estimated, to be the refunds referred to in Article 18 of Regulation (EEC) No. 85/68 applicable on the exportation of frozen boneless beef from the member states, as set forth by the regulations of the European Communities as published in the Official Journal of the European Communities. To the extent that it has been or can be established to the satisfaction of the Commissioner of Customs that imports of frozen boneless beef from the European Communities are subject to a bounty or grant in an amount other than that noted above, the amount so established shall be assessed and collected on imports of frozen boneless beef.

Effective on or after the date of publication of this notice in the FEDERAL REGISTER and until further notice, upon the entry for consumption or withdrawal from warehouse for consumption of such dutiable frozen boneless beef imported directly or indirectly from the European Communities, which benefits from these bounties or grants, there shall be collected, in addition to any other duties estimated or determined to be due, countervailing duties in the amount ascertained in accordance with the above declaration.

The liquidation of all entries for consumption or withdrawal from warehouse for consumption of such dutiable frozen boneless beef imported directly or indirectly from the European Communities, which benefits from these bounties or grants and is subject to this order, shall be suspended pending declaration of the net amounts of the bounties or grants paid.

The table in section 159.47(f) of the Customs Regulations (19 CFR 159.47(f)) is amended by inserting in the column headed "Country", the name the European Communities (consisting of France, the United Kingdom, West Germany, Luxembourg, Ireland, the Netherlands, Denmark, Italy and Belgium). The column headed "Commodity" is amended by inserting the words "frozen boneless beef" after the last entry for the European Communities (consisting of France, the United Kingdom, West Germany, Luxembourg, Ireland, the Netherlands, Denmark, Italy and Belgium). The column headed "Treasury Decision" is amended by inserting the number of this

Treasury Decision, and the words "Bounty Declared—Rate" in the column headed "Action".

(R.S. 251, secs. 303, as amended, 624; 46 Stat. 687, 759, 88 Stat. 2050; 19 U.S.C. 66, 1303, as amended, 1624)

(APP-4-05)

VERNON D. ACREE,
Commissioner of Customs.

Approved April 19, 1976,
DAVID R. MACDONALD,
Assistant Secretary of the Treasury.

[Published in the FEDERAL REGISTER April 23, 1976 (41 FR 16931)]

(T.D. 76-110)

Foreign currencies—Daily rates for countries not on quarterly list

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York for the Hong Kong dollar, Iran rial, Philippines peso, Singapore dollar, Thailand baht (tical)

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., April 14, 1976.

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates in U.S. dollars for the dates and foreign currencies shown below. These rates of exchange are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Hong Kong dollar:	
March 29, 1976	$0.2025
March 30, 1976	.2028
March 31, 1976	.2030
April 1, 1976	.2030
April 2, 1976	.2031
Iran rial:	
March 29–April 2, 1976	$0.0144
Philippines peso:	
March 29–April 2, 1976	$0.1330

Singapore dollar:	
March 29, 1976	$0.4023
March 30, 1976	.4023
March 31, 1976	.4027
April 1, 1976	.4024
April 2, 1976	.4030
Thailand baht (tical):	
March 29–April 2, 1976	$0.0490

(LIQ-3)

JAMES D. COLEMAN,
for JOHN B. O'LOUGHLIN,
Director,
Duty Assessment Division.

(T.D. 76-111)

Foreign Currencies—Certification of Rates

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., April 8, 1976.

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified the following rates of exchange which varied by 5 per centum or more from the quarterly rate published in Treasury Decision 76-30 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following daily rates:

Ireland pound:	
March 29, 1976	$1.9170
March 30, 1976	1.9155
March 31, 1976	1.9159

Italy lira:	
March 29, 1976	$0.001177
March 30, 1976	.001186
March 31, 1976	.001189
Portugal escudo:	
March 29, 1976	$0.0342
March 30, 1976	.0341
March 31, 1976	.0341
Spain peseta:	
March 29, 1976	$0.014905
March 30, 1976	.014915
March 31, 1976	.014935
United Kingdom pound:	
March 29, 1976	$1.9170
March 30, 1976	1.9155
March 31, 1976	1.9159

(LIQ-3)

JAMES D. COLEMAN,
for JOHN B. O'LOUGHLIN,
Director,
Duty Assessment Division.

[Published in the FEDERAL REGISTER April 23, 1976 (41 FR 16983)]

(T.D. 76-112)

Inspection, Search, and Seizure—Customs Regulations amended

Section 162.41(c) of the Customs Regulations, relating to the appraisement of merchandise and liquidation of entries covering merchandise subject to the provisions of section 592 of the Tariff Act of 1930, as amended (19 U.S.C. 1592), amended

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C.

205-321—76——2

TITLE 19—CUSTOMS DUTIES

CHAPTER I—UNITED STATES CUSTOMS SERVICE

PART 162 – INSPECTION, SEARCH, AND SEIZURE

On December 12, 1973, a notice of proposed rulemaking was published in the FEDERAL REGISTER (38 FR 34208), which proposed to amend section 162.41(c) of the Customs Regulations (19 CFR 162.41(c)) to provide that liquidation of an entry covering merchandise subject to the provisions of section 592 of the Tariff Act of 1930, as amended (19 U.S.C. 1592), shall be suspended until final disposition of the forfeiture proceedings. Section 162.41(c) presently provides that the liquidation of such entries shall not be suspended because of pending forfeiture proceedings.

Interested persons were given 30 days from the date of publication of the notice to submit relevant data, views, or arguments regarding the proposal. After consideration of the comments received and further review of the proposal, it has been determined that it is not in the best interest of either the public or the Customs Service to suspend liquidation of all entries covering merchandise subject to the provisions of 19 U.S.C. 1592. Consequently, the proposal has been modified to provide that the district director may liquidate such an entry prior to the conclusion of the investigation for a possible violation of 19 U.S.C. 1592 or the final disposition of any forfeiture proceedings or claim for forfeiture value if the district director determines that liquidation would be in the interest of the Government.

Accordingly, the proposed amendment of section 162.41(c) of the Customs Regulations (19 CFR 162.41(c)), modified in the manner described above, is adopted as set forth below.

Effective date. This amendment shall become effective 30 days after publication in the FEDERAL REGISTER.

(ADM-9-03)

VERNON D. ACREE,
Commissioner of Customs.

Approved April 14, 1976,
DAVID R. MACDONALD,
Assistant Secretary of the Treasury.

[Published in the FEDERAL REGISTER April 26, 1976 (41 FR 17381)]

PART 162 – INSPECTION, SEARCH, AND SEIZURE

Section 162.41 is amended by amending paragraph (c) and the heading to that paragraph to read as follows:

§ 162.41 Merchandise entered by false invoice, declaration, other document or statement subject to forfeiture.

* * * * *

(c) *Liability for duties; liquidation of entries.*

(1) When an entry covered by an investigation for possible violation of section 592 of the Tariff Act of 1930, as amended (19 U.S.C. 1592), or by a penalty action established under that section, has been made, the district director may liquidate the entry and collect duties prior to the conclusion of the investigation or final disposition of the forfeiture proceedings or claim for forfeiture value if he determines that liquidation would be in the interest of the Government.

(2) When merchandise not covered by an entry is subject to section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), a demand shall be made on the importer for payment of the duty estimated to be due on such merchandise in addition to the seizure of the merchandise or demand for forfeiture value.

(3) Any applicable internal revenue tax shall also be demanded unless the merchandise is to be, or has been, forfeited.

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

(T.D. 76–113)

Reimbursable Services—Excess Cost of Preclearance Operations

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C. April 21, 1976.

Notice is hereby given that pursuant to section 24.18(d), Customs Regulations (19 CFR 24.18(d)), the biweekly reimbursable excess costs for each preclearance installation are determined to be as set forth below and will be effective with the pay period beginning May 9, 1976.

Installation	*Biweekly excess cost*
Montreal, Canada	$ 10,564.00
Toronto, Canada	17,568.00
Kindley Field, Bermuda	5,604.00
Nassau, Bahama Islands	14,945.00
Vancouver, Canada	7,160.00
Winnipeg, Canada	1,426.00

(FIS-9-05)

JOHN A. HURLEY,
Assistant Commissioner,
Administration.

[Published in the FEDERAL REGISTER April 26, 1976 (41 FR 17405)]

(T.D. 76-114)

Synopses of drawback decisions

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., April 22, 1976.

The following are synopses of drawback rates and amendments issued June 9, 1975, to March 22, 1976, inclusive, pursuant to sections 22.1 and 22.5, inclusive, Customs Regulations.

(DRA-1-09)

LEONARD LEHMAN,
Assistant Commissioner,
Regulations and Rulings.

(A) *Airplane auxiliary power unit.*—T.D. 72-230-A, covering airplane auxiliary power units, manufactured under section 1313(a) by Hamilton Standard, Div. of United Aircraft Corp., Windsor Locks, CT, with the use of imported gas turbine engines, *amended* to cover a change in company's name to United Technologics Corporation.

Amendment effective on articles exported on and after May 1, 1975, the date of the name change.

Amendment issued by Regional Commissioner of Customs, Boston, MA, December 17, 1975.

(B) *Bag, aluminum foil laminated, poly (cellophane).*—Manufactured under section 1313(a) by California Almond Growers Exchange, Sacramento, CA, with the use of imported aluminum foil laminated poly (cellophane) roll stock.

Rate effective on articles manufactured and exported on and after October 22, 1975.

Rate issued by Regional Commissioner of Customs, San Francisco, CA, February 4, 1976.

(C) *Coal tar blends, crude; tar blend Germany, polytar soap, shampoo, emollient, emollient concentrate, and essence blend; and, acne-aid detergent soap.*—Manufactured under section 1313(a) by Stiefel Laboratories, Inc., Oak Hill, NY, with the use of imported coal tar oil extracts and wood tar blends; imported or drawback crude tar blends; and, imported sulfonated oil, respectively.

Rate effective on articles manufactured on and after April 25, 1975, and exported on and after May 16, 1975.

Rate issued by Regional Commissioner of Customs, New York, NY, December 1, 1975.

(D) *Compounds, polyvinyl chloride, plasticized.*—T.D. 66–12–L, as amended, and particularly as amended by T.D. 74–179–B, covering plasticized polyvinyl chloride compounds manufactured under section 1313(b) by Tenneco Chemicals, Inc., Saddle Brook, NJ, at its Burlington, NJ, factory, with the use of polyvinyl chloride resin, further *amended* to cover such articles manufactured by the company at its Pasadena, TX, factory.

Amendment effective on articles manufactured on and after January 31, 1975, and exported on and after June 16, 1975.

Amendment issued by Regional Commissioner of Customs, New York, NY, December 8, 1975.

(E) *Compressors, centrifugal, gas turbine driven.*—Manufactured under section 1313(a) by Norwalk-Turbo, Inc., Latham, NY, with the use of imported gas turbines.

Rate effective on articles manufactured on and after December 1, 1975, and exported on and after March 12, 1976.

Rate issued by Regional Commissioner of Customs, New York, NY, March 18, 1976.

(F) *Core drilling machines, pumping stations, earth auger drills.*—Manufactured under section 1313(a) by Acker Drill Co., Inc., Scranton, PA, at its Chinchilla, PA, factory, with the use of imported 2, 3, 4, 5, and 6-cylinder Deutz diesel engines.

Rate effective on articles manufactured on and after May 2, 1975, and exported on and after May 7, 1975.

Rate issued by Regional Commissioner of Customs, Baltimore, MD, December 15, 1975.

(G) *Diecasting machinery packages, automatic, highspeed.*—Manufactured under section 1313(a) by Avnet Machinery, Div. of Avnet, Inc., Pawtucket, RI, with the use of imported diecasting machines.

Rate effective on articles manufactured and exported on and after October 21, 1975.

Rate issued by Regional Commissioner of Customs, Boston, MA, January 13, 1976.

(H) *Film, polyester, coated.*—T.D. 66–110–C, as amended by T.D. 73–323–L, covering coated polyester film manufactured under section 1313(b) by Bee Chemical Co., Lansing, IL, at its Union City, NJ, factory, with the use of polyester film, further *amended* to cover the foregoing articles manufactured by the company at a new factory at Lansing, IL.

Amendment effective on articles manufactured and exported on and after April 18, 1973.

Amendment issued by Regional Commissioner of Customs, New York, NY, January 20, 1976.

(I) *Games, Air Hockey.*—Manufactured under section 1313(a) by Aurora Products Corp., West Hempstead, NY, with the use of imported line cords, terminal connectors, cord sleeves and cord clamps.

Rate effective on articles manufactured on and after July 28, 1975, and exported on and after August 5, 1975.

Rate issued by Regional Commissioner of Customs, New York, NY, January 20, 1976.

(J) *Glass stones, imitation, linked.*—Manufactured under section 1313(a) by Jewel Company of America, Inc., Providence, RI, with the use of imported glass stones.

Rate effective on articles manufactured and exported on and after February 18, 1976.

Rate issued by Regional Commissioner of Customs, Boston, MA, March 2, 1976.

(K) *Leather, pigment covered and surface textured.*—Manufactured under section 1313(a) by Schaffell Tanning Corp., Gloversville, NY, with the use of imported leather hides.

Rate effective on articles manufactured on and after August 1, 1974, and exported on and after October 29, 1974.

Rate issued by Regional Commissioner of Customs, New York, NY, February 11, 1976.

(L) *Nylon strings, fastener type.*—Manufactured under section 1313(a) by Nylon Products Corp., Clinton, MA, with the use of imported resin plastic materials (pellets).

Rate effective on articles manufactured on and after February 1, 1973, and exported on and after March 1, 1973.

Rate issued by Regional Commissioner of Customs, Boston, MA, January 12, 1976.

(M) *Osnaburg, finished.*—Manufactured under section 1313(a) by Staple Fabrics Corp., Garfield, NJ, with the use of imported osnaburg in the greige.

Rate effective on articles manufactured and exported on and after December 4, 1975.

Rate issued by Regional Commissioner of Customs, New York, NY, January 7, 1976.

(N) *Plystran and Permax and Plystran Plus.*—Manufactured under section 1313(a) by Seydel-Wooley & Co., Atlanta, GA, with the use of imported polyvinal alcohol, potato starch and carboxymethylcellulose.

Rate effective on articles manufactured on and after February 21, 1974, and exported on and after March 30, 1974.

Rate issued by Regional Commissioner of Customs, Miami, FL, June 9, 1975.

(O) *Power cranes, truck cranes, excavators, and electric shovels.*—T.D. 55316–C, as amended by T.D.'s 56239–T and 72–199–G, covering, among other things, power cranes, truck cranes, excavators, and electric shovels, manufactured under section 1313(a) by Harnischfeger Corp., Milwaukee, WI, at its Milwaukee, WI, Cedar Rapids, IA, and Escanaba, MI, factories, with the use of imported diesel engines, winches, rotoversals, and electrotorque control systems, further *amended* to cover a change in location of corporate offices to Brookfield, WI.

Amendment effective on articles manufactured and exported on and after July 15, 1975, the date of the change to the new location.

Amendment issued by Regional Commissioner of Customs, Chicago, IL, January 12, 1976.

205–321—76——3

(P) *Razor cartridges, twin blade, adjustable.*—Manufactured under section 1313(a) by Wilkinson Sword, Inc., Berkeley Heights, NJ, with the use of imported partly finished double edge blades.

Rate effective on articles manufactured on and after January 6, 1976, and exported on and after January 9, 1976.

Rate issued by Regional Commissioner of Customs, New York, NY, February 17, 1976.

(Q) *Refractory products, basic.*—T.D. 51991–A, as amended, and particularly as amended by T.D. 73–26–N, covering, among other things, basic refractory products manufactured under section 1313(b) by Kaiser Aluminum and Chemical Co., Oakland, CA, at its Columbiana, OH, and Moss Landing, CA, factories, with the use of refractory magnesia, further *amended* to cover these articles manufactured by the company at two new factories at Gary, IN, and Plymouth Meeting, PA.

Amendment effective on articles manufactured and exported on and after March 1, 1974.

Amendment issued by Regional Commissioner of Customs, New York, NY, February 5, 1976.

(R) *Sailcloth.*—T.D. 73–226–U, covering sailcloth manufactured under section 1313(a) by Aquino Sailcloth, Inc., City Island, NY, with the use of imported filament polyester greige goods, *amended* to cover the foregoing articles manufactured by the above company under section 1313(a) with the use of drawback filament polyester greige goods.

Amendment effective on articles manufactured on and after May 28, 1973, and exported on and after July 6, 1973.

Amendment issued by Regional Commissioner of Customs, New York, NY, March 22, 1976.

(S) *Seat covers, aircraft.*—Manufactured under section 1313(a) by Newport Plastics Corp., Newport, VT, with the use of imported upholstery fabric.

Rate effective on articles manufactured on and after September 8, 1975, and exported on and after November 9, 1975.

Rate issued by Regional Commissioner of Customs, Boston, MA, December 17, 1975.

(T) *Sizings of different grades.*—T.D. 73–323–T, covering sizings of different grades manufactured under section 1313(a) by Hudson Industries Corp., North Bergen, NJ, at its Hudson, NY, factory,

with the use of imported animal glue/technical gelatin *amended* to cover a change of the company's office address to West Orange, NJ, and to add a new factory at Johnstown, NY.

Amendment effective on articles manufactured and exported on and after October 31, 1973.

Amendment issued by Regional Commissioner of Customs, New York, NY, on January 28, 1976.

(U) *Snow blowers, runway sweepers, tow tractors, crash trucks, and special vehicles.*—T.D. 73–89–N, covering automobile truck chassis manufactured under section 1313(a) by SMI (Watertown), Inc., Watertown, NY, with the use of imported diesel engines, *amended* to cover the above articles manufactured under section 1313(a) with the use of imported hydraulic cylinders, impellers, auger flites, castings, radiators, radiator shutters, and drive lines.

Amendment effective on articles manufactured and exported on and after September 1, 1975.

Amendment issued by Regional Commissioner of Customs, Boston, MA, December 17, 1975.

(V) *Steel sheets and/or plates, sheared and formed.*—Manufactured under section 1313(a) by Standun, Inc., Compton, CA, with the use of imported hard rolled steel sheets and/or plates.

Rate effective on articles manufactured on and after January 1, 1974, and exported on and after July 10, 1974.

Rate issued by Regional Commissioner of Customs, San Francisco, CA, February 24, 1976.

(W) *Sub-assemblies of cranes.*—Manufactured under section 1313(a) by AMCA Int'l Corp., Morgan Engineering, a unit of Equipment Systems Div., Alliance, OH, with the use of imported steel plates, forgings, track wheels, and sheaves.

Rate effective on articles manufactured and exported on and after October 20, 1975.

Rate issued by Regional Commissioner of Customs, New York, NY, January 12, 1976.

(X) *Tobacco, sorted and stemmed.*—Manufactured under section 1313(a) by J.P. Taylor Co., Inc., Henderson, NC, with the use of imported leaf, filler and scrap tobacco.

Rate effective on articles manufactured on and after July 7, 1975, and exported on and after February 3, 1976.

Rate issued by Regional Commissioner of Customs, New York, NY, February 13, 1976.

(Y) *Tobacco, sorted and stemmed.*—Manufactured under section 1313(a) by Tobacco Processors, Inc., Wilson, NC, with the use of imported leaf, filler and scrap tobacco.

Rate effective on articles manufactured on and after January 12, 1976, and exported on and after February 6, 1976.

Rate issued by Regional Commissioner of Customs, New York, NY, February 13, 1976.

(Z) *Wrist watches, clocks, pocket watches, chronometers, other timekeeping devices, electronic watches, clocks, and other electronic timekeeping devices.*—Manufactured under section 1313(a) by Hamilton Watch Co., Inc., Lancaster, PA, at its Lancaster, PA, and East Petersburg, PA, factories, with the use of imported watch, clock, and electronic parts and components.

Rate effective on articles manufactured on and after May 16, 1974, and exported on and after January 22, 1976.

Rate issued by Regional Commissioner of Customs, Baltimore, MD, January 29, 1976.

ERRATUM

In Customs Bulletin, Vol. 10, No. 11, dated March 17, 1976, in T.D. 76–64, *Bonds*, on page 5 the last paragraph of the document should read: "The foregoing principal has been designated as a carrier of bonded merchandise."

Decisions of the United States Customs Court

Customs Decisions

(C.D. 4645)

ECONOMY COVER CORP. *v.* UNITED STATES

Rubber and plastic products

Plastic covers used as protective coverings for clothes were properly classified as articles not specially provided for, of rubber or plastics, under item 774.60 of the tariff schedules, dutiable at the rate of 8.5 per centum ad valorem, and not under item 772.35 where plaintiff claimed they were more specifically provided for by the

term "like furnishings." Notwithstanding their ostensible similarity with articles specifically enumerated in item 772.35, the importations did not possess the essential characteristics or purpose common to all the articles enumerated *eo nomine* in that schedule and, therefore, were not *ejusdem generis* (of the same kind or class) with them. Although used as protective coverings, the plastic covers were designed to be used for clothing and not on articles or furnishings associated with a home or place.

EJUSDEM GENERIS

When general words in a statute follow a specific enumeration of persons or things, the general words are not to be construed in their widest sense or meaning, but rather are to be limited, or held to apply, only to persons or things of the same kind or class as those specifically enumerated.

Court No. 75–1–00253

Port of New York

[Judgment for defendant.]

(Decided April 6, 1976)

Shaw and Stedina (*Charles P. Deem* of counsel) for the plaintiff.

Rex E. Lee, Assistant Attorney General (*Robert E. Silverman*, trial attorney), for the defendant.

RE, Judge: The question presented in this case pertains to the proper classification, for customs purposes, of certain merchandise exported from Hong Kong and Taiwan, and entered at the port of New York. The merchandise from Hong Kong is described as "plain polyethylene suit covers," and that from Taiwan as "crystal transparent covers." Both the suit covers, commonly known as overlap covers, and the transparent covers, known as shoulder covers, are plastic covers used as protective coverings for clothing. Since there is no genuine factual issue to be tried, the parties, pursuant to rule 8.2 of the rules of this court, have moved for summary judgment.

The merchandise was classified as "[a]rticles not specially provided for, of rubber or plastics," under item 774.60 of the Tariff Schedules of the United States [TSUS], as modified by Presidential Proclamation 3822, T.D. 68–9, and was consequently assessed with duty at the rate of 8.5 per centum ad valorem.

Plaintiff contests that classification, and claims that the merchandise is more specifically provided for in item 772.35 TSUS, as modified, *supra*, and therefore should have been assessed with duty at the rate of 6 per centum ad valorem.

For purposes of convenience the competing provisions of the tariff schedules may be set forth as follows:

Classified:

"Articles not specially provided for, of rubber or plastics:

* * * * * * *

774.60 Other ..... 8.5% ad val."

Claimed:

772.35 "Curtains and drapes, including panels and valances; napkins, table covers, mats, scarves, runners, doilies, centerpieces, antimacassars, and furniture slipcovers; and like furnishings; all the foregoing of rubber or plastics ..... 6% ad val."

It is clear that the overlap and shoulder covers are not a form of any of the articles specifically set forth *eo nomine* in item 772.35. Plaintiff, nevertheless, moves for summary judgment because it claims that they are embraced by the words "like furnishings" in item 772.35.

The defendant contends that since the plastic clothes covers are not *ejusdem generis* with the articles enumerated in item 772.35, they are not "like furnishings," and were properly classified. Defendant, consequently, cross-moves for summary judgment sustaining the classification, and denying plaintiff's motion.

Since there is agreement as to the nature and purpose of the protective plastic covers, the question presented is whether they were properly classified, as claimed by defendant, or whether they are "like furnishings" within item 772.35, as claimed by plaintiff.

It is the determination of the court that the overlap and shoulder covers are not *ejusdem generis*, i.e., of the same kind or class, as the other articles specifically enumerated in item 772.35. Since they are not "like furnishings," within the intendment of that item, plaintiff's claim must fail.

The doctrine of *ejusdem generis*, as an aid in the construction of statutes, is utilized frequently in the consideration of the tariff laws of the United States. It is a specific application or illustration of the broader maxim *noscitur a sociis*, i.e., known by its associates. This maxim is designed to teach that the meaning of a word may be known or revealed by the words with which it is accompanied or associated. Hence, when general and specific words are associated, not only may their meaning be gleaned from each other, but also, the meaning of the general words may be limited or restricted to the sense or category of the specific words.

In essence, *ejusdem generis* means that when general words in a statute follow a specific enumeration of persons or things, the general words are not to be construed in their widest sense or meaning, but rather are to be limited, or held to apply, only to persons or things of the same kind or class as those specifically enumerated.

An examination of the specifically enumerated articles preceding the words "like furnishings," in item 772.35 of the schedules, reveals that the plastic clothing covers at bar are not of the same class or kind. Notwithstanding their ostensible similarity they do not possess the essential characteristic or purpose which is common to the articles enumerated *eo nomine*.

Much ground has already been covered by the prior decisions in this area, and only a few broad markers need be highlighted. See *Venetianaire Corp. of America* v. *United States*, 60 CCPA 75, C.A.D. 1084, 470 F. 2d 1047 (1973); *Venaire Shade Corp.* v. *United States*, 66 Cust. Ct. 469, C.D. 4235 (1971); *Joanna Western Mills Company* v. *United States*, 64 Cust. Ct. 218, C.D. 3983, 311 F. Supp. 1328 (1970); *Kotake Co., Ltd., American Customs Brokerage Co.* v. *United States*, 58 Cust. Ct. 196, C.D. 2934, 266 F. Supp. 385 (1967).

Research as to the meaning of the words "like furnishings" may conveniently commence with the case of *Morimura Bros.* v. *United States*, 2 Ct. Cust. Appls. 181, T.D. 31941 (1911). In the *Morimura* case, the appellate court distinguished "furniture," "house furniture" and "house furnishings," as follows:

> "The term 'furniture' as ordinarily used may mean that with which anything is furnished, supplied, or equipped. House furniture has a restricted signification, however, which does not cover everything with which a house may be furnished, supplied, or equipped. House furniture, in these modern times, has come to denote those articles of household utility which were formerly made of wood and which are designed for the personal use, convenience, and comfort of the dweller. House furnishings, on the other hand, are the subsidiary adjuncts and appendages of the house, designed for its ornamentation or which are of comparatively minor importance so far as personal use, convenience, and comfort are concerned." 2 Ct. Cust. Appls. at 182.

The case of *Sprouse Reitz & Co., Frank P. Dow Co., Inc.* v. *United States*, 67 Cust. Ct. 209, C.D. 4276, 332 F. Supp. 209 (1971) refers to some of the meanings of the noun "furniture" under the various tariff acts, and the cases that have construed the term.[1] Although it has been stated that the term "furniture" is one of "broad signification" (*Necchi Sewing Machine Sales Corp., et al.* v. *United States*, 30 Cust.

[1] The *Sprouse Reitz* case, though not appealed to the Court of Customs and Patent Appeals, was inferentially affirmed in *Albert E. Price, Inc.* v. *United States*, 60 CCPA 127, C.A.D. 1095, 476 F. 2d 1354 (1973).

Ct. 1, 3, C.D. 1489 (1952)), under the Tariff Act of 1930 "house furnishings" remained limited to articles of ornamentation. See *Furniture Import Corp.* v. *United States*, 56 Cust. Ct. 125, C.D. 2619 (1966); *Fabry Associates, Inc.* v. *United States*, 45 Cust. Ct. 88, C.D. 2203 (1960).

In 1970, in the *Joanna Western Mills* case, this court noted that the words "like furnishings," in item 772.35 of the tariff schedules, were new, and that prior cases, decided under the Tariff Act of 1930, were not dispositive of their meaning. The court, construed the word "furnishings" in the light of the new enactment, and concluded that, "when used in the tariff schedules, [it] cannot be limited on the basis of the presence or absence of ornamentation." Basing its construction also on other provisions of the tariff schedules, and the case of *Barth & Dreyfuss* v. *United States*, 62 Cust. Ct. 86, C.D. 3685 (1969), the court found that Congress has indicated that furnishings "may be ornamented as well as unornamented." 64 Cust. Ct. at 236.

In the *Barth & Dreyfuss* case, plaintiff claimed that terry cloth potholders were "like furnishings" under item 366.65 of the tariff schedules. The pertinent headnote provided that "the term 'furnishings' means curtains and drapes, including panels and valances; towels, napkins, tablecloths, mats, scarves, runners, doilies, centerpieces, antimacassars, and furniture slipcovers; and like furnishings * * *." Plaintiff maintained that the potholders were "furnishings" *ejusdem generis* with, and "of the same class and character" as the towels, napkins, etc. enumerated in the pertinent headnote. After the receipt of plaintiff's post-trial brief the defendant conceded the correctness of plaintiff's contention, and requested that it be relieved of filing a brief. The court agreed that plaintiff's argument was "well taken," and held that the potholders were "like furnishings" "*ejusdem generis* with the towels, place mats, napkins, and dish towels enumerated" in the provision for "furnishings."

The merchandise in the *Joanna Western Mills* case consisted of plastic window shades on wooden rollers. The classification question presented was whether the window shades had been properly classified as "[c]urtains and drapes * * * and like furnishings," under item 772.35. An examination of the definitions of shades, curtains and drapes, not only revealed their similarity, but also that the articles "share[d] a common purpose or function in concealing, screening and controlling light." Since the window shades were used as "window coverings to provide privacy and light control," the court found that they were "*ejusdem generis* with curtains and drapes." 64 Cust. Ct. at 237. The court, therefore, held that the window shades were "like furnishings" within item 772.35.

In its brief in support of its motion, plaintiff refers to the broadness of the term "furnishings," and states that "it cannot be seriously argued that the shoulder and overlap covers" are "within the common meaning of the term furnishings." The question presented, however, is not whether the shoulder and overlap covers are "furnishings" for the statutory provision does not read "and other furnishings."

The claimed provision specifically enumerates *eo nomine* about a dozen furnishings, and includes "and *like furnishings*." (Emphasis added.) The provision, therefore, offers a classic example for the proper application of the doctrine of *ejusdem generis*. Hence, proof that articles are "furnishings" is insufficient to establish that they are "like furnishings" within the tariff provision. The proof must establish that they are of the same kind and class as those specifically enumerated. For example, in the *Joanna Western Mills* case, the window shades were not merely held to be "furnishings." They were held to be "like furnishings," i.e., of the same kind and class as "curtains and drapes," articles specifically enumerated in the tariff provision.

Plaintiff invokes the customs law principle that, whenever imported merchandise is covered in two or more tariff provisions, it is to be classified under the one that describes it most specifically. Therefore, it maintains that since the overlap and shoulder covers have been classified under a general or "basket" provision, they should have been classified under the more specific provision for "furnishings."

The cited principle of relative specificity is not in issue, only its applicability. For example, it is basic that if merchandise is specified *eo nomine*, the *eo nomine* provision prevails over one that is general or less specific. The principle is of such importance and frequent application that it is codified in General Interpretative Rule 10(c) that provides:

> "an imported article which is described in two or more provisions of the schedules is classifiable in the provision which most specifically describes it; * * *"

This approach, however, is circuitous for the merchandise is not specified *eo nomine* in the claimed provision, and the question presented remains whether it constitutes "like furnishings."

Plaintiff stresses the "likeness" of the plastic overlap and shoulder covers to table covers, furniture covers, mattress covers and pillow covers, and concludes that they are "like furnishings" within item 772.35. The "likeness" test, as suggested by plaintiff, would result in an expansion of the category beyond the legislative intent. The "likeness" must have reference to, and is limited by, the particular category. i.e., the kind or class of the enumerated articles. As stated by this court in *Kotake Co., Ltd., et al.* v. *United States*, 58 Cust. Ct.

196, 199, C.D. 2934, 266 F. Supp. 385 (1967), "[e]*jusdem generis* means literally 'of the same kind.'" Note also the case of *Vanaire Shade Corp.* v. *United States*, 66 Cust. Ct. 469, 473, C.D. 4235 (1971) wherein plaintiff claimed that vinyl folding doors should have been classified under item 772.35 as "*curtain-like* furnishings." (Emphasis in original.) In overruling the protest, and sustaining their classification as unprovided for articles of plastics, this court held that the vinyl folding doors were "not *ejusdem generis* with 'curtains' and 'drapes' and [were], therefore, not 'like furnishings'." Since the doors were not of the kind or class enumerated in the claimed provision, they had been properly classified under the general provision covering unprovided for articles of plastics.

Plaintiff, in support of its motion, places great reliance on the case of *Venetianaire Corp. of America* v. *United States*, 60 CCPA 75, C.A.D. 1084, 470 F. 2d 1047 (1973). In substance, plaintiff submits that "applying the criteria of 'likeness' enunciated in the *Venetianaire* case, this Court should hold the imports to be describable as 'like furnishings' of plastics under item 772.35, TSUS." In the *Venetianaire* case the question pertained to the classification of plastic mattress covers and pillow covers which had been classified under item 772.15 as plastic household articles. In reversing this court, which had sustained the classification (67 Cust. Ct. 118, C.D. 4261 (1971)),[2] the Court of Customs and Patent Appeals held that they were "like furnishings" under item 772.35. Although the mattress covers and pillow covers were not specifically enumerated in item 772.35, the appellate court indicated that they were "almost identical" to the "plastic table and furniture covers * * * exemplary of furnishings classified in item 772.35." 60 CCPA at 77.

Item 772.35 specifies *eo nomine* "table covers" and "furniture slipcovers," and it is significant that the appellate court stated that they "are all employed for like functions and purposes—namely, as protective coverings for the articles upon which they are used in the home." 60 CCPA at 78. The court quoted from the brief of the appellee the sentence that the "furnishings included in item 772.35, TSUS, are those commonly used *throughout the home*, either for decorative or protective purposes." *Ibid.* (Emphasis added.)

The statement of the appellate court, that the furnishings enumerated in item 772.35, are all used as protective coverings "for the

[2] In sustaining the classification, the Customs Court relied in part on a Bureau of Customs ruling that, although the plastic mattress and pillow covers were protective covers, they were "not used on furniture," and were therefore not classifiable under item 772.35 but under item 772.15 as plastic household articles. Also the 1968 Summaries of Trade and Tariff Information stated that "mattress and pillow covers are among some of the more important articles of plastic housewares included under item 772.15 of the tariff schedules." 67 Cust. Ct. at 121-22. The appellate court likewise disagreed with the view that it had been the intent of Congress "to classify bedding separately from other furnishings."

articles upon which they are used *in the home,*" emphasizes a basic characteristic that is common to each of the articles specifically enumerated in item 772.35 (emphasis added). Apart from the decorative or functional aspect of the articles, the concept of "furnishings" in the *Venetianaire* case does not differ from that of the *Morimura* case where the court described them as "adjuncts and appendages *of the house.*" (Emphasis added.) 2 Ct. Cust. Appls. at 182.

An examination of the articles enumerated in item 772.35 will reveal that each one of them is used to enhance or protect other articles that are used in a home or household. Plaintiff, however, points out that the articles enhanced or protected "find use in furnishing places other than homes, such as hotels, motels, restaurants, ships, etc." It is clear, nonetheless, that they are all used on articles that furnish a *place* or a situs.

The articles enumerated in item 772.35 fall into a category with two subdivisions. The first consists of curtains, drapes, panels and valances. Clearly, these articles are appendages to a home, house or place, and it is not claimed that the overlap or shoulder covers belong to this group. The second subdivision covers: "* * * napkins, table covers, mats, scarves, runners, doilies, centerpieces, antimacassars, and furniture slipcovers." Since plaintiff claims that the overlap and shoulder covers are like table covers and furniture covers, it must contend that they are embraced in this second group.

The dictionary definitions of the enumerated articles make it clear that they are all articles used with furniture, or with other articles used in a home, to adorn or protect it, and enhance the room or place in which the articles are displayed or located. Defendant points out that even "napkins," used to wipe lips or fingers, also serve to enhance the table with which they are used, thereby providing a more elaborate appearance for the room.

The affidavits submitted by plaintiff indicate that the overlap and shoulder covers are chiefly used as protective coverings for wearing apparel displayed for sale in retail stores, and to protect wearing apparel in storage. Unlike any of the other furnishings enumerated in 772.35, they are not used to adorn, protect or enhance adjuncts or appendages of a house, home, room, place or situs. They lack the one common characteristic which unites all of the furnishings enumerated in item 772.35. See *Kotake Co., Ltd., et al.* v. *United States*, 58 Cust. Ct. 196, 199, C.D. 2934, 266 F. Supp. 385 (1967).

Overlap and shoulder covers are designed and used to protect clothing rather than to protect or enhance a home or any other place or situs. The articles with which they are used are dissimilar to those specified in item 772.35. Differently stated, the imported

articles are designed to be used for clothing, whereas all of those set forth *eo nomine* in item 772.35 are designed to be used on articles or furnishings associated with a home or place.

The imported overlap and shoulder covers do not ornamentally or functionally protect or enhance any home, house, place or situs, or any articles or furnishings used therein. They are, therefore, not "like furnishings" *ejusdem generis* with the articles specifically enumerated in item 772.35 of the tariff schedules.

In view of the foregoing, it is the determination of the court that plaintiff's motion for summary judgment is denied, defendant's cross-motion is granted, and the customs classification of the imported merchandise under item 774.60 of the tariff schedules is sustained.

Judgment will issue accordingly.

(C.D. 4646)

CALIFORNIA PROCESSED FRUIT CO. *v.* UNITED STATES

Dutiable weight

CHERRIES IN SYRUP—PRESERVATIVE AND PACKING MEDIUM—LACK OF COMMERCIAL VALUE

Cherries packed in syrup and imported in drums at Los Angeles-Long Beach, California from France, classified under TSUS item 154.05 and assessed at the rate of 7 cents per pound and 10 *per centum ad valorem* on the cherries and syrup *held* not subject to specific duty on the weight of the syrup where testimony of industry witnesses establishes that the syrup preserves the cherries and protects them from crushing during transportation, is discarded when the cherries are removed for processing in the United States, and is not known to have any further commercial use. *United States* v. *E. W. J. Hearty, Inc.*, 31 CCPA 106, C.A.D. 257 (1943) followed.

Court No. 70/7296

Port of Los Angeles

[Judgment for plaintiff.]

(Decided April 7, 1976)

Glad, Tuttle & White (*Robert Glenn White* of counsel) for the plaintiff.

Rex E. Lee, Assistant Attorney General (*John N. Politis* trial attorney), for the defendant.

RICHARDSON, Judge: The merchandise in this case consists of cherries in syrup exported from France in drums on or about May 31, 1969, and classified in liquidation upon entry at the port of Los Angeles-Long Beach, California, under TSUS item 154.05 as glace fruits at the duty rate of 7 cents per pound and 10 *per centum ad valorem*. The only issue in the case is the proper dutiable weight of the imported merchandise. The total weight of cherries and syrup combined was utilized in the assessment of the specific rate of duty. It is alleged that the specific duty should be assessed only on the net weight of the cherries exclusive of any syrup or packing medium.

In the pleadings it is admitted that the merchandise consists of 100 drums of glace* cherries in syrup, and that the contents of each drum weighed 540 pounds.

Plaintiff's president, David Chorna, testified that he has been in the business of manufacturing and selling glazed fruits and peels since 1939, that he placed the order for the imported merchandise case, that he weighed the cherries and syrup in 10 percent of the imported drums and found that each 50-gallon drum contained 300 pounds of cherries and 240 pounds of syrup. As to the usage of the syrup in issue, the witness testified (R. 12):

> Q. You said you drained these drums and weighed the cherries, is that correct? A. Yes; it is.
>
> Q. After that had been done what did you do with these specific cherries? A. We took the syrup and put it back on the cherries. With the hundred drums of cherries?
>
> Q. Yes. A. They were shipped to the Bonbon Corp., which is a subsidiary of the Carnation Ice Cream Co.
>
> Q. Do you know whether or not the liquid in which these specific cherries arrived in the drums had any use? A. They did not have any use.

After colloquy between the court and counsel at this point the witness further testified (R. 13–14):

> Q. Mr. Chorna, to your business, the California Processed Fruit Co., did that liquid in which these cherries arrived have any value? A. No; it did not.
>
> Q. Do you know what was done by the party to whom you sold these cherries with that syrup? A. Yes.
>
> Q. How do you know? A. I was there and saw it.
>
> Q. What did they do with the syrup? A. They put the syrup down a sewer.
>
> Q. Do you know whether or not in the processed fruit industry there is any trading, or is there any trading in the type of liquid that these cherries arrived in? A. Not to my knowledge.

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*The evidence reveals that the cherries are maraschino cherries which apparently were incorrectly invoiced as glace cherries.

The witness stated that the cherries in issue were used to make bonbons which are being sold at confectionery stands in theaters. Mr. Chorna also explained that a manufacturer of maraschino cherries would produce his own syrup in order to maintain quality control of his product, and would not utilize another manufacturer's syrup because its content would be unknown to him. The result is that there is no buying and selling of excess syrup solutions among the processed fruit manufacturers.

On the same subject of syrup usage, Adolph R. Asti, a food technologist who has been in the employ of S & W Fine Foods, wholesale grocers and food manufacturers, for 37 years [called on behalf of the Government] testified that he was one of the principals in developing a bubble spray system for making maraschino and glace cherries. On direct examination he testified (R. 58–59):

> Q. You have heard the testimony of Mr. Chorna here this morning in court, is that correct? A. Yes.
> Q. You also are familiar with the way that the cherries in issue in this case were packed, is that correct? A. That's right.
> Q. What, in your opinion, is the purpose of the syrup? A. The only purpose of the syrup in my opinion would be to prevent it from being crushed in transportation.
> Q. Could water have been used instead of syrup? A. Not to maintain the same product.
> Q. What would happen if you used water? A. Then you would be diffusing the suger from the cherries and wouldn't have the same brix you started out with.

Whether or not the syrup in the drums in this case is dutiable turns upon the existence or non-existence of commercial value in this country for the syrup following its importation as a preservative and packing medium. *United States* v. *E. W. J. Hearty, Inc.*, 31 CCPA 106, C.A.D. 257 (1943). In the *Hearty* case the merchandise was chicken breasts packed in tins along with a gelatinous substance known as "zalivka" which surrounded the meat, as to which specific duty had been assessed against the entire contents of the tins. Upon evidence furnished from users of the product to the effect that the gelatinous substance was merely a packing material which in commercial practice is discarded upon opening of the tins the trial court sustained the importer's protest against duty assessment on the gelatinous substance. Our appeals court was of the opinion that the evidence supported the conclusion of the trial court that the substance lacked *commercial value*, and affirmed the decision of the trial court. The appeals court said (p. 108):

> . . . As found by the court below, this record as a whole is quite convincing, we think, that in using the imported chicken

breasts for chicken salad, chicken pie, and other dishes, which seemed to be its main uses, it was not feasible or practicable to utilize the 6 ounces of gelatinous substance in any manner, and that no practicable use for it was known.

The plaintiff-importer argues that the facts at bar are analogous to the facts in the *Hearty* case in that the syrup has no use other than as a preservative and packing medium for the cherries which is discarded after separation from the cherries. Defendant argues that the *Hearty* case is inapplicable here because the conclusion reached there was supported by the testimony of 7 witnesses, whereas here the conclusion urged by plaintiff is supported by the testimony of only 1 witness whose testimony must be characterized as weak and unconvincing.

In evaluating testimonial evidence it is not the number of witnesses who testify, but rather the quality of their evidence, which the court regards as being important for resolution of an issue of fact. In this case, not one, but both parties' witnesses have given uncontradicted evidence that the imported syrup has no commercial value in this country other than as a preservative and packing medium. And, in the court's view both witnesses, by virtue of their long experience and association in the processed fruit industry, are qualified to know the usage of the syrup in issue in the industry. Furthermore, the lack of commercial value is sustained by the fact that the syrup is discarded upon separation from the cherries. *Cf. Peabody & Co.* v. *United States*, 13 Ct. Cust. Appls. 80, T.D. 40935 (1925).

It is to be noted, however, that Mr. Asti stated that he had observed that the syrup of bottled maraschino cherries [to which a flavoring had been added] had been used by some people to flavor a manhattan cocktail while other people simply left it in the bottle after removing the cherries, and indicated that he would not use the syrup in that fashion. In any case, such purely subjective, personal, and occasional use of domestically bottled syrup by some consumers of maraschino cherries can hardly be considered to constitute a practicable, commercial usage of the syrup in question which apparently never reaches the cherry consumer in the form imported, if at all.

On the record in this case the court finds that the case is brought within the principle of the *Hearty* case, as the evidence clearly establishes that the imported syrup lacks commercial value following its importation, and should not, therefore, be subjected to the specific duty applicable to the cherries. The allegations in the complaint are sustained. And judgment will be entered herein accordingly.

Decisions of the United States Customs Court

Abstracts

Abstracted Protest Decisions

DEPARTMENT OF THE TREASURY, *April 12, 1976.*

The following abstracts of decisions of the United States Customs Court at New York are published for the information and guidance of officers of the customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to customs officials in easily locating cases and tracing important facts.

VERNON D. ACREE,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P76/94	Ford, J. April 5, 1976	Ardalt, Inc., et al.	70/62475, etc.	Item 653.37 17%, 15% or 13%	Item 653.35 9%, 8% or 7%	Morris Friedman & Co. v. U.S. (C.D. 4570, aff'd C.A.D. 1157)	New York Candleholders, candlesticks, etc.
P76/95	Ford, J. April 5, 1976	Bibi & Haber Oriental Art, Inc., et al.	68/32405, etc.	Item 653.37 17% or 15%	Item 653.35 9% or 8%	Morris Friedman & Co. v. U.S. (C.D. 4570, aff'd C.A.D. 1157)	New York Candleholders, candlesticks, etc.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P76/96	Ford, J. April 5, 1976	Commodore Business Machines, Inc.	67/7538	Item 676.23 12.5%	Item 676.20 10.5%	Judgment on the pleadings	New York Calculating machines
P76/97	Ford, J. April 6, 1976	William Adams, Inc., et al.	69/37368, etc.	Item 653.37 17%, 15% or 13%	Item 653.35 9%, 8% or 7%	Morris Friedman & Co. v. U.S. (C.D. 4570, aff'd C.A.D. 1157)	New York Candleholders, candlesticks, etc.
P76/98	Ford, J. April 6, 1976	J. Gerber & Co., Inc., et al.	68/64249, etc.	Item 653.37 17%	Item 653.35 9%	Morris Friedman & Co. v. U.S. (C.D. 4570, aff'd C.A.D. 1157)	New York Candleholders, candlesticks, etc.
P76/99	Richardson, J. April 7, 1976	C. J. Tower & Sons of Buffalo, Inc., a/c Metco, Inc.	69/48904, etc.	Item 657.50 16% or 14%	Item 620.32 Free of duty	U.S. v. C. J. Tower & Sons of Buffalo, Inc., a/c Metco, Inc. (C.A.D. 1163)	Buffalo-Niagara Falls Composite powder
P76/100	Landis, J. April 7, 1976	Uniroyal, Inc.	74-7-01745	Item 700.60 20%	Item 700.55 6%	Agreed statement of facts	Charleston Footwear

P76/101	Newman, J. April 7, 1976	Gallagher & Ascher Company et al.	67/13625, etc.	Item 684.70 15% (items marked "A") Item 706.06, 706.60 or 791.65 20% (items marked "B")	Item 685.22 12.5% (items marked "A") No appraised value found for entirety; merchandise not appraised and liquidated according to law; liquidations void; actions premature and dismissed; entries returned to district director for appropriate administrative action (items marked "B")	Agreed statement of facts (items marked "A") Lafayette Radio Electronics Corp. v. U.S. (C.A.D. 977) (items marked "B")	Chicago Earphones (not headphones) of a type chiefly used with radios (items marked "A") Radio cases imported with radios; entireties (items marked "B")

Decisions of the United States Customs Court

Abstracts

Abstracted Reappraisement Decisions

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R76/54	Richardson, J. April 5, 1976	A & A Trading Corp.	74-1-00162, etc.	Export value	Appraised values less amounts described as commission, purchasing agent's commission or buying commission which were included in appraised values	Judgments on the pleadings	Los Angeles Merchandise covered by invoices which specify A & A Japan, Ltd. and A & A Japan, Ltd. or Allied Sales Corp. as having been involved in the transaction
R76/55	Landis, J. April 7, 1976	Montgomery Ward & Co. et al.	R61/14862, etc.	American selling price	Set forth under column "Unit Value Per Pair" on schedule attached to decision and judgment	Agreed statement of facts	San Francisco Footwear (tennis shoes)
R76/56	Re, J. April 7, 1976	Wood Mosaic Industries, Inc.	R66/9186	Export value	Net appraised value less 7¼%, net packed	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Charleston Japanese plywood

Appeals to United States Court of Customs and Patent Appeals

APPEAL 76–15.—International Fashions *v.* United States.—LADIES' KNITWEAR, APPRAISEMENT OF—EXPORT VALUE. Appeal from C.D. 4640.

Ladies' acrylic knitted sweaters and boucle capes were held properly appraised on the basis of export value as that value is defined in section 402(b), Tariff Act of 1930, as amended by the Customs Simplification Act of 1956 (19 U.S.C.A., section 1401a(b)), at invoiced unit values plus 5 percent. Plaintiff contended that the proper export values were the f.o.b. invoice unit values, net packed, without the addition of 5 percent. Plaintiff argued that the appraisement was separable so as to permit challenge of only the inspection fee. The record showed that the 5 percent was paid for inspection services performed by the manufacturer's managing director before the merchandise was in a condition, packed ready for exportation to the United States; that the 5 percent was added in the appraisement upon the advice of a customs agency report which indicated there was an additional 5 percent paid as an inspection fee that was not shown on the invoices; that the appraiser did accept the invoice unit values as the starting point in making the appraisement in issue.

It is claimed that the Customs Court erred in rendering judgment for defendant-appellee and in failing to render judgment for plaintiff-appellant; in finding and holding that appellant had not made out a *prima facie* case for appraisement of the imported knitted women's wearing apparel on the basis of export value, *supra*, that did not include the 5 percent commission paid for 100% inspection; in not finding and holding that appellant failed to prove that such or similar merchandise was freely sold or offered for sale for exportation to the United States at prices which did not include the disputed 5 percent commission; in failing to find and hold that the evidence herein has established that such or similar merchandise was freely sold or offered for sale for exportation to the United States to all who cared to buy at prices which did not include the disputed 5 percent commission; in finding and holding that the merchandise involved herein was "quality controlled" knitwear that was different from knitwear that was not given 100% inspection by Mr. Cheung (managing director of Sincere's Knitting Factory); in failing to find and hold that the merchandise involved was the same or similar to knitwear sold by Sincere's Knitting Factory (the manufacturer) without 100% inspection by Mr. Cheung but was given similar inspection prior to shipment by the agents of the

shipper's other customers; in finding and holding that the application of the separability principle does not apply to the facts in this case without first a showing that such or similar merchandise was freely sold or offered for sale at a price that did not include the disputed 5 percent commission; in failing to find and hold that, as the appraiser did accept the invoice unit values as the starting point in making the appraisement herein and added thereto 5 percent paid as an inspection fee, the doctrine of separability applies to the facts in this case; in finding and holding that the disputed 5 percent inspection commission is an expense incidental to placing the merchandise in condition, packed ready for shipment to the United States; in not finding and holding that the disputed 5 percent commission is a charge for services associated with the purchase of said merchandise, and does not inure to the benefit of the seller; in failing to find and hold that the disputed 5 percent commission was a nondutiable charge, and not part of the market value of said knitwear.

APPEAL 76–16.—United States *v.* Norman G. Jensen, Inc.—"TREE FARMERS"—OTHER TRACTORS—TRACTORS SUITABLE FOR AGRICULTURAL USE—TSUS. Appeal from C.D. 4634

Certain four-wheeled tractors, models C5D and C6D, denominated "Tree Farmers" by the manufacturer were assessed with duty at 5.5 percent ad valorem under the provision in item 692.35, Tariff Schedules of the United States, as modified by T.D. 68–9, for other tractors. The Customs Court sustained plaintiff's claim that the tractors were properly free of duty under item 692.30 as tractors suitable for agricultural use.

It is claimed that the Customs Court erred in finding and holding that the merchandise was free of duty under item 692.30, *supra;* in not finding and holding that it was properly classified under item 692.35, *supra;* in finding and holding that the merchandise is suitable for agricultural use; in finding and holding that the skidding of logs is an agricultural pursuit; in not finding and holding that the skidding of logs is a function of the lumbering industry, which is an industry separate and apart from agriculture; in not finding and holding that the skidding of logs is a function of the forestry industry, which is an industry separate and apart from agriculture; in not finding and holding that it was not the intent of the Congress to include logging tractors within the ambit of item 692.30; in rendering a decision and judgment based upon extraneous printed materials which are not part of the record, were not received in evidence, were not cited by the parties to the action, and are not recognized as standard reference work.

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